United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1909.

No. 2026 641

JANE M. WHITE, CHARLES WHITE, JUNIOR, AND JENNIE W. FUGITT, EXECUTORS OF CHARLES WHITE, DECEASED, APPELLANTS,

vs.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED MAY 14, 1909.

Argued Dec. 7/1909

At common law it was held that there was
no remedy against the Estate in an action
at law. Because of this injustice courts
of equity afforded a remedy against the
decedent's estate.

1st When Executors became liable
2d Can Executors be joined with others?
3d Does the payment of Debts by Executor
Will pr. take the claim against Executor
out of Statute of limitations?

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1909.

No. 2024.

JANE M. WHITE, CHARLES WHITE, JUNIOR, AND JENNIE W. FUGITT, EXECUTORS OF CHARLES WHITE, DECEASED, AND CHARLES WHITE, JUNIOR, INDIVIDUALLY, APPELLANTS,

vs.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 9, 1909.

In the Court of Appeals of the District of Columbia.

No. 2024.

JANE M. WHITE ET AL., Appellants,
vs.
THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

a Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration, &c.*

Filed November 18, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

The plaintiff, the Connecticut General Life Insurance Company, a corporation existing and doing business under and by virtue of the laws of the state of Connecticut, sues Jane M. White, Jennie W. Fugitt and Charles White, junior, Executors of the duly probated

last will and testament of Charles White, to whom letters testamentary were issued in November, 1905, and who thereupon qualified and have ever since been acting as such, and sues said Charles White, junior, individually, and in his own right.

1. For that, said Charles White, by the name of Chas. White, and said Charles White, junior, by the name of Chas. White, jr., on the first day of March, 1888, by their promissory note of that date, now overdue, promised to pay to the order of the plaintiff, eighteen months after date, the sum of one thousand dollars, with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank; that
2 said note was given in part payment for certain real estate which was then and there sold and conveyed in fee by the plaintiff to said Charles White and Charles White, Jr., as tenants in common, and they became severally liable on said note and this suit is brought in respect of their several liability; that said note has not been paid, nor any part thereof, except the sum of five hundred dollars ($500.00) paid on account of the principal November 7, 1889, and the interest thereon to September 1, 1907, although the same was duly presented to and approved and passed by the Probate Court of said District as a claim against said estate, and payment thereof has been duly demanded of said makers, and of said executors, who have failed to return an account according to law.

Wherefore the plaintiff demands judgment against the defendants for the sum of five hundred dollars ($500.00) with interest from September 1, 1907.

2. For that, said Charles White, by the name of Chas. White, and said Charles White, junior, by the name of Chas. White, Jr., on the first day of March, 1888, by their other promissory note, now overdue, promised to pay to the order of the plaintiff, two years after date, the sum of one thousand dollars ($1,000.), with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank; that said note was given in part payment of the purchase-money of certain real estate which was then and there sold and conveyed in fee by the plaintiff to said Charles White and Charles White, Jr., as tenants in common and they became severally liable on said note, and this suit
3 is brought in respect of their several liability; that said note has not been paid, nor any part thereof, except the semi-annual interest thereon to September 1, 1907, although the same was duly approved and passed by the Probate Court of said District as a claim against said estate and payment thereof has been duly demanded of said makers and of said executors, who have failed to return an account according to law.

Wherefore the plaintiff demands judgment against the defendants for the sum of one thousand dollars ($1,000.) with interest thereon from September 1, 1907.

3. For that, said Charles White, by the name of Chas. White, and said Charles White, junior, by the name of Chas. White, Jr., on the first day of March, 1888, by their promissory note of that date, now

overdue, promised to pay to the order of the plaintiff, three years after date, the sum of two thousand dollars ($2,000.00), with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank; that said note was given in part payment of the purchase-money of certain real estate which was then and there sold and conveyed in fee by the plaintiff to said Charles White and Charles White, Jr., as tenants in common, and they became severally liable on said note, and this suit is brought in respect of their several liability; that said note was duly presented to and approved and passed by the Probate Court of said District as a claim against said estate, but has not been paid, nor any part thereof, except the semi-annual interest thereon to September
4 1, 1907, although payment thereof has been duly demanded of said makers, and of said executors, who have failed to return an account according to law.

Wherefore the plaintiff demands judgment against the defendants for the sum of two thousand dollars ($2,000.) with interest from September 1, 1907.

4. For that said Charles White, by the name of Chas. White, and said Charles White, junior, by the name of Chas. White, Jr., on the first day of March, 1888, by their other promissory note of that date, now overdue, promised to pay to the order of the plaintiff, four years after date, the sum of two thousand dollars ($2,000.), with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank; that said note was given in part payment of the purchase-money of certain real estate which was then and there sold and conveyed in fee by the plaintiff to said Charles White and Charles White, Jr., as tenants in common, and they became severally liable on said note, and this suit is brought in respect of such several liability; that said note has not been paid, nor any part thereof, except the semi-annual interest thereon to September 1, 1907, although the same was duly approved and passed by the Probate Court of said District as a claim against said estate, and payment thereof has been duly demanded of said makers, and of said executors, who have failed to return an account according to law.

Wherefore the plaintiff demands judgment against the defendants for the sum of two thousand dollars ($2,000.), with interest thereon from September 1, 1907.

5 5. And the plaintiff sues the defendants for money payable to the plaintiff for goods sold and delivered by the plaintiff to said Charles White and Charles White, junior; and for work done and materials provided by the plaintiff to them at their request; and for money lent to them by the plaintiff; and for money paid by the plaintiff to them at their request; and for money received by them for the use of the plaintiff; and for money found to be due from them to the plaintiff on accounts stated between them. And the plaintiff claims the sum of five thousand five hundred dollars ($5,500.00), with interest from the first day of September, 1907. according to the particulars of demand hereto annexed.

S. R. BOND,
Attorney for Plaintiff.

The defendants are to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

S. R. BOND,
Attorney for Plaintiff.

Particulars of Demand.

(First Note.)

$1000. WASHINGTON, D. C., *March* 1, 1888.

Eighteen months after date, for value received, we promise to pay to the order of the Connecticut General Life Insurance Com-
6 pany, One Thousand dollars, with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank.

CHAS. WHITE.
CHAS. WHITE, JR.

Endorsement: Nov. 7, 1889. Paid on principal $500.00. And prior and subsequent endorsements of payment of semi-annual interest each year to September 1, 1907.

(Second Note.)

$1000. WASHINGTON, D. C., *March* 1, 1888.

Two years after date, for value received, we promise to pay to the order of the Connecticut General Life Insurance Company, One Thousand Dollars, with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank.

CHAS. WHITE.
CHAS. WHITE, JR.

(Third Note.)

$2000. WASHINGTON, D. C., *March* 1, 1888.

Three years after date, for value received, we promise to pay to the order of the Connecticut General Life Insurance Company, Two Thousand Dollars, with interest thereon, until paid, at the rate of six per cent. per annum, payable semi-annually, at the Central National Bank.

CHAS. WHITE.
CHAS. WHITE, JR.

7 (Fourth Note.)

$2000. WASHINGTON, D. C., *March* 1, 1888.

Four years after date, for value received, we promise to pay to the order of the Connecticut General Life Insurance Company, Two Thousand Dollars, with interest thereon, until paid, at the rate of

six per cent. per annum, payable semi-annually, at the Central National Bank.

CHAS. WHITE.
CHAS. WHITE, JR.

Same endorsements of payment of interest on second, third and fourth notes as on the first.

DISTRICT OF COLUMBIA, *ss:*

Samuel R. Bond being duly sworn deposes and says; that he is the agent and attorney of the Connecticut General Life Insurance Company, a corporation under the laws of Connecticut, and named as plaintiff in the declaration to which this is attached, and in its action as plaintiff against Jane M. White, Charles White, Junior, and Jennie W. Fugitt, as executors of the estate of Charles White, deceased, and against Charles White, Jr., individually and in his own right.

That the plaintiff's cause of action is the four notes set forth in said declaration and the particulars of demand thereto annexed, which are referred to and made part hereof; that said notes
8 were, to affiant's personal knowledge, made by said Charles White and Charles White, Junior, and given in part payment of the purchase-money for certain real estate sold and conveyed to them as in said declaration set forth; that the interest on the notes has been paid, semi-annually, to September 1, 1907, and $500 on the principal was paid as stated in said declaration, but that no other payment on account of interest or principal has been made; that said notes were presented to, and approved and passed by, the Probate Court of this District as a claim against said estate, in October, 1906, and as such were presented to said executors, who, though letters testamentary were issued to them in November, 1905, and they have assets in their hands, have not paid any part of said claim, and that, by reason of the premises the plaintiff claims to be due, exclusive of all set-offs and just grounds of defense, and that he is entitled to recover from the defendants, the sum of $5,500.00, with interest thereon from September 1, 1907.

S. R. BOND.

Subscribed and sworn to before me this 18th day of November 1907.

J. R. YOUNG, *Clerk,*
By ALF. G. BUHRMAN,
Asst. Cl'k.

9 *Pleas of Jennie W. Fugitt, Executor.*

Filed December 9, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,

vs.

JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

The defendant, Jennie W. Fugitt, one of the executors of Charles White, deceased, for pleas to the declaration of the plaintiff, The Connecticut General Life Insurance Company, says:

1. That Charles White, deceased, by the name of Charles White did not promise, as alleged in paragraph one thereof, to pay the debt therein described, did not pay any portion thereof or the interest thereon as alleged, did not covenant as alleged with respect thereto, is not indebted as alleged nor to any extent whatever; that the note therein sued was not presented and refused as alleged, nor was demand and refusal thereof made as alleged.

2. That the same answer as above to Paragraph 1 is made to paragraph 2 of plaintiff's declaration.

3. That the same answer as made to Paragraph 1 is made to Paragraph 3 of plaintiff's declaration.

10 4. That the same answer as made to Paragraph 1 is made to Paragraph 4 of plaintiff's declaration.

5. Answering Paragraph 5. This defendant says: That Charles White, deceased, is not indebted to the plaintiff for money payable to the plaintiff for goods sold and delivered by the plaintiff to said Charles White; or for work done and materials provided by the plaintiff to him at his request, or for money loaned to said defendant by the plaintiff, or for money paid by the plaintiff to said defendant at his request; or for money received by him for the use of the plaintiff; or for money found to be due from said defendant to the plaintiff on accounts stated between them.

6. And for a further plea in this behalf, the said defendant says: That the said plaintiff ought not to have or maintain his aforesaid action against Charles White, because she says that the said several supposed causes of action, or any or either of them, in the said declaration mentioned did not accrue to the said plaintiff at any time within twelve years next before the commencement of this suit in manner and form as the said plaintiff hath above complained, and this she is ready to verify.

7. And for a further plea in this behalf, the said defendant says: That the said plaintiff ought not to have or maintain the aforesaid action against Charles White, because she says that the said several

supposed causes of action, or any or either of them, in the said declaration mentioned were refused and rejected by this defendant and her co-executor, Jane M. White, two of the executors of
11 Charles White, deceased, at a time more than a year next before the commencement of this suit in manner and form as said plaintiff hath above complained, and this she is ready to verify.

Wherefore, this defendant prays judgment if the said plaintiff ought to have or maintain this aforesaid action against the estate of Charles White, deceased.

McNEILL & McNEILL,
Attorneys for Defendant Jennie W. Fugitt.

Replication to Pleas of Jennie W. Fugitt, Executor.

Filed December 18, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

The plaintiff joins issue upon the several pleas of the defendant Jennie W. Fugitt, Executor.

S. R. BOND,
Plaintiff's Attorney.

12 *Pleas of Jane M. White, Executor.*

Filed January 4, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

The defendant, Jane M. White, one of the executors, for plea to the Declaration and each and every count thereof, says:

1. That she did not undertake and promise in manner and form as therein alleged.

2. That she is not indebted in manner and form as therein alleged.

3. That her Testate, Charles White, Senior, did not undertake and promise in manner and form as therein alleged.

4. That her Testate, Charles White, Senior, was not indebted in manner and form as alleged.

5. And for further plea to said Declaration, this defendant says: That the several supposed causes of action, or any or either of them, in the said Declaration mentioned, did not accrue within three
13 years next preceding the commencement of this suit.

6. And for further plea, this defendant says: That the said several supposed causes of action, or any or either of them, in the said Declaration mentioned, were refused and rejected by this defendant and Jennie W. Fugitt, two of the executors of said Charles White, deceased, at a time more than one year next preceding the commencement of this suit.

McNEILL & McNEILL,
Att'ys for Jane M. White, Ex.

Pleas of Charles White, Jr., Executor.

Filed January 14, 1908.

In the Supreme Court of the District of Columbia.

No. 49957. At Law.

THE CONNECTICUT GENERAL LIFE INS. CO.
vs.
JANE M. WHITE ET AL.

The defendant Charles White, Jr., one of the executors of the late Charles White, Sr., for plea to the plaintiff's declaration says:

1. That he and his co-defendant executors did not promise as alleged.

2. That he and his co-defendant executors are not indebted as alleged.

3. That Charles White, Sr., the testator of himself and of
14 his co-defendant executors, did not promise as alleged.

4. That Charles White, Sr., the testator of himself and his co-defendant executors, was not indebted as alleged.

J. J. DARLINGTON,
Attorney for Defendant Charles White, Jr., Executor.

Replication to Pleas of Jane M. White, Executor.

Filed January 15, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

The plaintiff joins issue upon the several pleas of the defendant Jane M. White, Executor.

S. R. BOND,
Plaintiff's Attorney.

15 *Replication to Pleas of Charles White, Junior, Executor.*

Filed January 23, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Defendants.

The plaintiff joins issue upon the several pleas of the defendant Charles White, Junior, Executor.

S. R. BOND,
Plaintiff's Attorney.

Memoranda.

December 14, 1908.—Verdict for plaintiff for $5,500.00 with interest from September 1, 1908, against Defendants, Jane M. White, Charles White, Jr., and Jennie W. Fugitt, Executors.

Hearing on motions for new trial, &c., extended to January 29, 1909, inclusive.

16 Supreme Court of the District of Columbia.

FRIDAY, *January* 29, 1909.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * * * *

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Pl't'f.,
vs.
JANE M. WHITE, CHARLES WHITE, JUNIOR, and JENNIE, W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JUNIOR, Individually, Def'ts.

Upon hearing the motions of defendants Jane M. White and Jennie W. Fugitt, two of the Executors of Charles White, deceased, in arrest of judgment, for a new trial, and for judgment for the defendants notwithstanding the verdict of the jury, it is considered that said motions be, and hereby are overruled, and judgment on verdict ordered against the defendants Jane M. White, Charles White, Junior, and Jennie W. Fugitt, as Executors of Charles White, deceased.

Therefore it is considered that the plaintiff recover against said defendants Jane M. White, Charles White, Junior, and Jennie W. Fugitt as Executors of Charles White, deceased, the sum of Fifty-five hundred dollars ($5,500.) with interest thereon from the 1st

day of September, 1908, being the money payable by said de-
17 fendants, as such Executors, to the plaintiff, by reason of the premises, together with its costs of suit to be taxed by the Clerk, and have execution thereof.

The said defendants note an appeal to the Court of Appeals of the District of Columbia, and the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars ($100).

Bond for Appeal to Court of Appeals.

Filed February 15, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE CO.
vs.
CHARLES WHITE, JR., ET AL.

Know all men by these presents, that we, Jennie W. Fuggit, Executrix of Charles White, deceased, as principal, and The Title Guaranty & Surety Company, as surety, are held and firmly bound unto the above named Connecticut General Life Insurance Company in the full sum of One Hundred ($100.00) dollars to be paid to the said Connecticut General Life Insurance Company its executors, administrators, successors, or assigns. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, administrators, successors, and assigns, firmly by these presents. Sealed with
18 our seals, and dated this 5th day of February, in the year of our Lord one thousand Nine hundred and Nine.

Whereas the above-named Jennie W. Fuggit, Executrix of Charles White, deceased has prosecuted an appeal to the Court of Appeals of the District of Columbia, to reverse the Judgment rendered in the above suit by the said Supreme Court of the District of Columbia.

Now, therefore, the condition of this obligation is such, That if the above-named Jennie W. Fuggit, Executrix of Charles White, deceased shall prosecute her said appeal to effect, and answer all damages and costs if — shall fail to make good her plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JENNIE W. FUGITT, [SEAL.]
Executrix of Charles White, Deceased.
THE TITLE GUARANTY & SURETY COMPANY, [SEAL.]
By WILLIS W. PARKER, [SEAL.]
Attorney-in-Fact.

Sealed and delivered in the presence of—

—— ——.

Approved the 15th day of Feb'y, 1909.
WENDELL P. STAFFORD,
Justice, S. C. D. C.

Memoranda.

March 12, 1909.—Time to submit Bill of Exceptions extended to April 1, 1909.

April 1, 1909.—Bill of Exceptions submitted to Court and time to settle Exceptions and file record extended to April 10, 1909.

19 Supreme Court of the District of Columbia.

SATURDAY, *April* 10, 1909.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Pltf.,

vs.

JANE M. WHITE, CHARLES WHITE, JR., and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JR., Individually, Def'ts.

Now come here the defendants, Jane M. White and Jennie W. Fugitt, two of the Executors of Charles White, deceased, by their Attorneys and pray the Court to sign, seal and make part of the record, their bill of exceptions taken at the trial of this cause (heretofore submitted) now for then, which is accordingly done.

Upon motion of the Attorneys for the defendants, it is ordered that the time to file the transcript of the record in the Court of Appeals in this cause be, and it is hereby further extended to and including May 15, 1909.

20 *Bill of Exceptions.*

Filed April 10, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,

vs.

JANE M. WHITE, CHARLES WHITE, JR., and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JR., Individually, Defendants.

The above-entitled cause came on to be heard on December 10th, 1908, at the October 1908 term of the Circuit Court before Justice Stafford and the jury.

And thereupon, the jury having been sworn to truly try the issues joined in said cause, the plaintiff to maintain the issues on its part joined, gave in evidence the testimony of the following witnesses:

ROBINSON WHITE, a witness of lawful age, having been duly sworn, testified as follows:

He is a son of the late Charles White, deceased, who died on the first of November, 1905; he is familiar with the handwriting of Charles White, deceased, and also the handwriting of Charles White, Jr.; the notes sued on being exhibited he states that the signatures to said notes are the genuine signatures of Charles White,
21 deceased, and of Charles White, Jr., on each of the notes.

(No cross-examination.)

The execution of the notes was admitted by the defendants' counsel.

And next the plaintiff, to maintain the issues on its part joined, offered in evidence the face of the notes sued on in this cause.

The defendants, by their counsel, objected to the competency of the notes sued on, but the objection was overruled and the defendants then and there noted an exception.

The faces of the notes sued on were thereupon admitted as evidence on behalf of the plaintiff.

And next the plaintiff, to maintain the issues on its part joined, offered the proof of claim presented to the Probate Court and the endorsements thereon by the Judge and the Register as follows:

"Will pass when paid. Ashley M. Gould, Justice, Attest, W. C. Taylor, Register of Wills."

The defendants, by their counsel objected to the competency of this evidence, but the objection was overruled, and the defendants then and there noted an exception.

And next the plaintiff, to maintain the issues on its part joined offered in evidence Docket of Claims No. 6 of the Probate Court of the District of Columbia; entry on page 365:

"Estate of Charles White, Sr., Legal Representatives, Jane M. White, Charles White, Jr., and Jennie W. Fugitt, Executors."

"Name of claimant" etc.

"Nature of Claim."

"Amount, due with interest, etc. for notes dated March 1st, 1888, passed October 19th; amount $5500.00."

22 The defendants, by their counsel objected to the competency of this evidence, but the objection was overruled and the defendants then and there noted an exception.

And next the plaintiff, to maintain the issues on its part joined, gave in evidence the testimony of CHARLES WHITE, JR., who being duly sworn testified:

He is a resident of the city of Washington, District of Columbia and his occupation is an iron founder and he is a son of the late Charles White, deceased; the notes sued on being exhibited to this witness, he states that he signed them and that his father also signed them at his (witness') office; he examines the last note on the list, a note for eighteen months, and states that payment of principal on this note in the amount of Five Hundred Dollars was made November 7th, 1889 to his personal knowledge. That interest was also paid at this date by the firm of Charles White & Company, composed

of Charles White, Sr., and this witness; this payment was made to Mr. Bond at his office; interest was paid on this note prior to this date, namely, December 8th, 1888 and April 9th, 1889; the interest has been paid regularly on the notes sued on from the time they were made; the interest is payable semi-annually, that is at the expiration of each six months; the interest was perhaps not paid exactly on the date due, but a few days thereafter or something within reason; the interest was paid up to the time Charles White, Sr., died and since then; the last payment of interest was made in September 1908; up to September 1st, 1908 no year passed in which the interest was not paid since the notes were given; the interest in
23 the first place was paid to Mr. Bond and subsequently to the Connecticut General Life Insurance Company; I always got a receipt and the payments applied on all four of the notes and I have here the receipts.

The receipts for interest payments are offered in evidence on behalf of the plaintiff. It was admitted by defendants' counsel that the interest on the notes was regularly paid up to the last time it was due.

Being further examined, the witness stated that the payments of interest were made with the money of Charles White & Company, all of them, up to the time that Charles White & Company dissolved in 1893. It is true in one sense, as far as his father and witness were concerned, the firm of Charles White & Company dissolved; as far as father and himself and the public were concerned, his father did not withdraw from the firm at that time, but stayed in the firm to maintain its credit. Charles White & Company dissolved, as between witness and his father in 1893; after this the payments were made by the firm of Charles White & Company; the interest payments were not all alike; up to five or six years ago the interest was 6% and all the payments were alike. After the dissolution, witness took it up with the money of the firm of Charles White & Company; Charles White, Jr., did not trade as Charles White & Company until a few years ago.

All the money that was paid in interest on the notes sued on up to the time of the dissolution between witness and his father was paid by money belonging to both of them out of the firm's
24 business; after 1893 witness paid it himself, he was trading as Charles White & Company. Whereupon the witness was asked the following question, by Mr. Bond:

"Q. I will ask you whether or not there was any arrangement between you and your father as to the payments after 1893?"

The defendants by their counsel objected to the competency of this question, but the objection was overruled and the defendants then and there noted an exception. This witness thereupon testified as follows:

"A. The arrangement between father and myself after 1893 was that we were to pay the interest jointly, and I paid the interest and charged him up with his one-half, as I paid it semi-annually. He paid me a part of it, and the rest remains unpaid."

The witness stated that he kept a contemporaneous record and ac-

count of the payments on interest as between himself and his father in a book (produces book) and made the entries in this book and they are originally entries in the witness' handwriting and were made at the time the payments were made or within a day or so.

Whereupon the witness was examined by counsel for the defendants and asked whether or not the book produced was a ledger. And the witness answered that it was, that it had other accounts in it in addition to the account against Charles White, deceased and that the items of the account of Charles White, deceased were taken from receipts as the witness paid the amounts and were just entered there against Charles White, deceased from the receipts.

Whereupon being asked as to what funds were used in paying said amounts, the witness answered—"Q. You paid them from
25 your own pocket? "A. No; up to a certain date, yes; from that time from Charles White & Company's funds." The witness further stated that after the year 1893 these payments were made out of his own funds and the insertions made in his book that his father knew about it; that the entries were made from the original receipts which were offered in evidence. Whereupon the following occurred:

Mr. COLBERT: "Then I object, because this is nothing more than a transcript."

WITNESS: "This is the original entry. I sat down and took a copy of the receipt and put it in there. My father had knowledge of this fact; I called his attention to it several times; he knew there was an account existing between ourselves, he and I, as to the interest due on these notes, and in one instance I borrowed Six Hundred Dollars from him and I was not able to pay it back in a few days, as I thought I would, and it went on. I gave him credit for it and he afterwards stated to me that he would let that go on account of interest, I could not pretend to remember the time, but I gave him credit for the amount when I got it. I never paid him the Six Hundred Dollars and he said that it was agreed between us that it should go on account of interest as it accumulated on this indebtedness of the Connecticut General Life Insurance Company; he saw this account; I had quite a talk with him on the twenty-fifth (25th) day of September, 1905, just a little before he died; he came into my office and asked me if I could raise or borrow for him Two Thousand Dollars. I told him I would try; then the ques-
26 tion came up about his owing me this money; we looked over the book, and he said that it was all right, that he would attend to that shortly; that we would settle that up between us when he got straightened out. I borrowed the Two Thousand Dollars for him on that date. That is why I so distinctly remember it being that day. He had known before this of the existence of this book. He knew it all the time; I called his attention to it several times; not only did I do that, but he asked to see those receipts, so as to be sure this interest was being paid up promptly on this debt all the time and I showed him the receipts. There is a credit of Six Hundred Dollars to my father on the book and this is the amount I borrowed of him, it was agreed that I should pay the interest and charge my father with one-half.

Mr. BOND: I offer this book in evidence.

The COURT: I think that may be admitted.

The defendants, by their counsel, objected to the competency of this book, but the objection was overruled and the defendants then and there noted an exception.

WITNESS: "My father and myself did business together after 1893, the time of the dissolution in the firm name; we did contract work after this date."

To the admission of the foregoing evidence counsel for defendants then and there objected and the objection being overruled, then and there excepted.

WITNESS: "I stated a little while ago that I showed that
27 book to father on perhaps a dozen different occasions. The last time I took it to him was on the 27th of September, 1905. The book was opened and we went over it and perhaps figured up the account; my father raised no objections whatever on seeing the charges against him. He only regretted he had not been able to pay it."

On cross-examination, said witness testified:

By Mr. COLBERT:

"Q. Mr. White do you claim your father's estate owes you the money you have paid on this interest account? A. My answer to that would be to state that I don't know. I will give my reasons for not filing it. A. Morally, yes. Legally, I don't know whether it is or not.

Q. Do you claim it, I say? A. No; I don't say I do claim it, because I don't know that I can bring it. It is barred by the Statute. I claim the last payment of interest made September 1905 is due me."

Witness, in answer to questions by defendants' counsel, said: "I claim the charges made against my father on the book are morally due me and I don't see why they are not due me. I filed several claims against my father's estate in the Probate Court and did not even mention anything in the book; I will tell you why I did not and the reason is that I could not file a claim which was a partnership matter against the estate; I filed a claim on account of feeding
my father's horses, amounting to about Nine Hundred Dol-
28 lars; I did not file a claim against the estate for one-half of the debt of Sixteen Hundred Dollars that we both owed the Central National Bank. This was filed by the Central National Bank; and suit was brought on this claim by the Central National Bank and under the advice of my counsel, Mr. Darlington I paid it in full; the note was a note drawn by Charles White & Company and endorsed by my father. My father partly got the benefit of the money and the estate really owed a part of that note and I was the drawer of the note and father was the endorser. The Central National Bank probated the claim against the estate, but Mr. Darlington advised me rather than have a suit brought or after it was brought. to go there and pay it and I went and paid it by his advice. I do not remember whether I claimed one-half of this debt against my

father's estate after his death or not. I signed the petition for Letters Testamentary on my father's estate and for the probate of his will and made oath to it; I stated in that petition that my father left debts as follows:

Funeral expenses, Cost of burial, Three Hundred Dollars due to various laborere and doctors bills; a promissory note amounting to Two Thousand Dollars and another debt of Four Thousand Dollars, secured by mortgage on house 225 6th Street, making a total of unsecured debts, Two Thousand Seven Hundred Dollars and secured debts Four Thousand Dollars; I did not state in this petition that my father owed me the money I now claim he owes me, because I was advised by counsel that it was a partnership matter and could not be put in against the estate. My brother Bob, a lawyer,
29 gave me this advice. He was attorney for the executors and made up that document. I signed the petition to sell certain real estate of my father's estate.

It is not a fact that in 1893 when me and my father dissolved partnership, I assumed all partnership debts. I only assumed the existing debts. There was no agreement by which I should assume the debts; all the floating debts of that concern I paid, I do not remember whether anything was ever said about assuming them or not. On March 30th, 1893, I formally and in writing agreed with my father to djssolve the partnership as between us. I do not remember signing any paper, if you have a paper to that effect, that paper is the best evidence. It is a fact that I paid all the floating debts of the concern. It is a fact that I collected all debts that were due to the firm at the date of dissolution and put them to my own private account; the arrangement between my father and myself with reference to the payment of $5500 debt was that we were to each pay one-half of the debt. That was not a firm debt, but an individual debt. I only charged my father one-half of the amount of the interest. My father conveyed to me the interest in the property upon which these notes were secured on March 30th, 1893 at the same time of the dissolution of the partnership my father conveyed to me this very property and yet agreed to be responsible for half this mortgage debt. In February 1893 father came to me and wanted me to borrow for him individually the sum of Eight Thousand Dollars; when father went into the business with me in
30 1887, he came in without putting in a dollar; the money that started business was that borrowed money, borrowed from the several banks by the firm of Charles White and Company by the endorsement of my father and I continued business with the borrowed money up to 1893; on that date father had some debts which he had to pay and wanted the firm to borrow about $8000 dollars and wanted the firm to pay if afterwards; that is I was to go and pay that debt and being a member of the firm of course he had a right to do it. I went around to the several banks and borrowed this money and said to my father "if I have got to borrow this money on the firm's account, it is evident that I have got to pay it all alone, you are not interested in this concern at all, you don't give it any of your attention or time and you have not put a dollar in it."

I borrowed the money and in consequence of that in order to secure myself the best I could in the event of anything happening to him, he deeded me his interest in that property with the understanding that if I got this money for him he was to pay one-half of the existing debt of the Connecticut General Life Insurance Company. I had a deed drawn, and it was drawn by brother Bob, in which he guaranteed —. I said to him when he was drawing these papers, that had he not better give me a paper writing, father guaranteeing to pay that existing debt, and Bob said, "We have protected you in that, we will give you a deed."

To the admission of the foregoing evidence, counsel for the defendants then and there objected and the objection being overruled the defendants' counsel then and there noted an exception.

31 Witness said, in further answer to question by defendants' counsel: "The real estate on which the notes sued on are secured are lots 14-15-16-17-and 18, square 504 on O Street, between 4½ and Union Streets, Southwest. I have my iron foundry works down there now. In 1893 I do not think the property was worth more than was paid for it, namely $8,000. We bought the property in 1888; we borrowed more than $6,000 on the property; we bought the property from the Connecticut General Life Insurance Company for $8,000. I do not think it was worth more than Eight Thousand, but I bought my father's half interest in it for Ten Thousand. That was the consideration he got for his half interest. He got Eight Thousand Dollars out of the firm and was endorser on those notes; I went around to the different banks and got those notes discounted, in order that he might get the money and there was Two Thousand Dollar note that he was endorser on, that brought the consideration up to Ten Thousand Dollars. My father sold me a one-half interest in the property in 1893 and in consideration of his one-half interest I assumed an indebtedness of Ten Thousand Dollars, the only thing I got out of the indebtedness of Ten Thousand Dollars was his one-half interest in the property. The property has a frontage of 150 feet on O Street between 4½ and Union Streets and I think a depth of 130 feet. I gave father a mortgage of Seven Thousand Dollars to secure the notes that I had gone around to the banks and borrowed the money to pay him. He endorsed those notes, I gave him a deed of trust for Seven Thousand Dollars on the property. The

32 notes secured by the trust were all discounted in the bank before the Deed of Trust was made and in order to secure him the payments of those notes, I gave him that Deed of Trust. The debt existed before the 30th, but he wanted Eight Thousand dollars and I had to raise it for him in some way. He wanted to borrow it out of the firm, and if he did, the firm would have owed it. I would have to continue business with his as a partner and pay it at the same time. He was not giving me any equivalent and I took those notes around to the different banks, five thousand Dollars of them and got them discounted, so as to enable me to lend this money. I then got these notes discounted and let him have the money and then gave him a deed of trust to secure these notes that were in bank, in fear as he stated, that anything should happen; that is the way it was

done; I did not think of the valuation of the property at all and did not take it into consideration at all, but simply in consideration of getting a little bit of what I was deprived of. I hate to say it, but I can establish every word of it. I did not borrow Seven Thousand Dollars for my father on my endorsement, but I borrowed on my father's endorsement. It was the signature of Charles White & Company that got the money — I think Six Thousand of it was Charles White, Jr. and Two Thousand Charles White & Company, the banks loaned the money on my credit and my father's credit. I was drawer and he was endorser. I actually handed him over this money and afterwards paid the notes. I did not charge them to my father, because I was to pay them; of course when I bought him out,
33 I was to pay them, after I paid him over the money, I paid the notes. I paid the last one of the notes after my father died. He continued to endorse these notes in one of the banks to help me along, until he died, then I had to come up. In 1893 the company was dissolved, that is the time, just a few days before that, within a week before that, the notes were made. The money was actually borrowed before the dissolution of the partnership and they were in bank on the 30th day of March, 1893, when the firm was dissolved. The signature now shown me to the agreement of dissolution of the partnership between my father and myself, is my signature; the paper does not bear date, but it was on the 30th day of March, A. D. 1893 that we dissolved, I do not know when that paper was drawn. I cannot say that it was drawn on the very day of the dissolution, I cannot state that it was drawn before or afterwards, it might have been drawn afterwards, or it might have been drawn the very day we dissolved. It looks to me as though it was drawn afterwards. I have not the slightest recollection of it. This paper was not published in the newspapers of Washington for the reason that there was an agreement between father and myself that he was not to go out of the concern, in order to maintain credit of the concern and in order to pay those notes, that I had borrowed in order to get the money for him. I cannot see why my father should owe me Seven Thousand Dollars when I assumed Seven Thousand Dollars in lieu of his interest in the property and held myself personally responsible for it. That was the consideration for my father's one-half interest, but it was not a consideration, because the fact is that the property was not
34 worth one-half the money that I paid for it. I gave my father a mortgage for seven thousand dollars reciting that I owed him seven Thousand Dollars to secure the notes that I had got discounted in the different banks in that amount. The note was renewed from time to time, until my father died in 1905.

The cancelled notes for the Seven Thousand Dollars being shown to witness, he stated—that the notes were renewed from time to time and that he could not hold a three months' note in bank from time it matured in 1893 up to 1905 and that his father endorsed these renewal notes from 1893 up to the time he died; the renewal notes are evidently in witness' possession but he has not got them now; could not say that he has every one of them, but guesses he has the

majority of them; will produce all he can find of them at the next session. "I did not pay my father anything for his half interest in the business when we dissolved, the Seven Thousand Dollars is all I gave him and I assumed other debts." The Deed of Trust referred to, securing the seven Thousand Dollars, is shown to witness and he states that he signed it and the following is a quotation from said deed of trust.

By Mr. COLBERT:

"Q. I now read you a few lines from this paper:

"Whereas the said Charles White, Jr., is indebted to Charles White, Sr., in the sum of $7,000, being the balance of the purchase money for the one undivided half interest of the said Charles White, Jr. in and to the within hereafter described real estate"——.

If $7,000 was the balance, what was the total price you
35 paid? A. I stated the debt I assumed was about ten thousand Dollars. I stated that he got eight thousand dollars out of the business at this time; he actually got seven thousand and got the other three thousand of the ten thousand by my assuming a paper he was endorser on in the business. He endorsed this paper and the firm got the money for it."

On re-direct examination, this witness testified as follows:

"I have the deed that my father gave me for his one-half interest and I now produce it. At the time this deed was executed there was something said about the continued liability of my father for his half of the $5500.

And next the plaintiff, to maintain the issues on its part joined, introduced in evidence the deed from Charles White and Jane M. White, his wife, of Washington, D. C., to Charles White, Jr., which is as follows:

"Charles White *et ux.*
to
Charles White, Junior.

Deed.

This indenture made this 13th day of March in the year of our Lord, One Thousand Eight Hundred and ninety-three by and between Charles White and Jane M. White, his wife of Washington, D. C., parties of the first part and Charles White, Junior of the same place, party of the second part:

Witnesseth, That the said parties of the first part for and
36 in consideration of Ten Thousand Dollars lawful money to them in hand paid by the party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, his heirs and assigns, forever the following described premises and lands, situate, lying and being in the city of Washington, District of Columbia and distinguished as

and being the undivided one half (½) interest of the said Charles White of and in and to the following described land and premises to-wit,—being Lot- numbered fourteen (14), Fifteen (15), sixteen (16), seventeen (17), and eighteen (18) in square numbered five hundred and four (504) according to the recorded plat of the said city together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining and all the estate, right, title, interest and claim either at law or in equity, or otherwise however of the parties of the first part, of, in, to or out of the said land and premises:

To have and to hold the said land and premises and appurtenances unto and to the only use of the party of the second part, his heirs and assigns forever. And the said Charles White for himself and for his heirs, executors and administrators do- hereby cove-
37 nant and agree to and with the party of the second part, his heirs and assigns, that he the party of the first part and his heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein by, from, under and through him, his heirs or assigns, and further, that the party of the first part and his heirs shall and will at any and all times thereafter, upon the request and at the cost of the party of the second part, his heirs and assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, his heirs or assigns, as the party of the second part or his or their counsel, learned in the law, shall advise, devise or require.

In testimony whereof, the parties of the first part, have hereunto set their hands and seals on the day and year first herein before written.

CHARLES WHITE. [SEAL.]
JANE M. WHITE. [SEAL.]

Signed, sealed and delivered in the presence of
ROBINSON WHITE.

The said witness being further examined testified as follows:—

WITNESS: "When the deed was given I asked for a separate paper writing, guaranteeing me that my father would pay his one-half of the incumbrance then existing on the property and by and
38 through the advice of my brother Robert and himself, they said that they had fully protected me in the deed, as far as that was concerned; and whatever father said to me was just as good as a paper writing. I never knew him to vary from his word; my father and I were always friendly, I do not think father and I ever had a disagreement in our lives, and this friendly relation continued up to the time of my father's death. I was in business with father off and on all the time since I was 18 years old. I was con-

nected with him all through his life, clear up to the time he died. There were always very many mutual benefits between us. The $7000 Deed of Trust which I gave my father has been released and paid."

On recross-examination this witness testified:

There is a suit now pending to set aside the release obtained by me of the $7000 Deed of Trust which is very unjust; the suit for the release of the deed of trust was brought against Henry F. Getz, one of the trustees, because he had absconded. I went into the Probate Court, by counsel, and asked for the appointment of a new trustee; this suit was conducted entirely by my counsel. The members of the family had no interest whatever in those notes, as the notes never belonged to father; when that Deed of Trust was given, the notes belonged to the Bank.

And next the plaintiff, to maintain the issues on its part joined, recalled as a witness ROBINSON WHITE, who testified as follows:

I attended to business for my father in connection with the transfer of property at the time of the dissolution of the
39 partnership. Can't say I was employed by my father entirely; my father and brother both spoke to me; I can hardly say that the relation of attorney and client existed between us; my father talked to me frequently about his affairs in business, more as a son of course, than as an attorney; I never took a retainer from my father, nor fee in my life. I think my father and brother came to me, because they considered me a neutral party and not on account of my legal knowledge; I did not understand that I was giving them legal advice or as an attorney. My father came to me and said he was going to convey his interest in the property to my brother and he asked me if I would prepare the deed and in reply I asked my father what understanding he had with my brother about the place and stated to him that it was usual to insert in the deed the assumption by the grantee of any indebtedness, if it was so understood and he replied, "You need not do that," or "Don't do that; I have that already arranged with Charlie." It has been fifteen years or more, and I may not give his exact words, but in substance that is what he said. I remember distinctly telling him that it was usual to insert in the deed an assumption by the grantee of any indebtedness where there was one, and his instructions were not to put it in, because he had an understanding with Charlie about that. He did not explain what that understanding was. By "Charlie" he meant Charles White, Jr. I afterwards drew the deed; my recollection is that when the matter was finally closed there was a controversy—this deed was drawn before, I think a day or two before; my memory is not the clearest about this, but my best recollection is that
40 the question as to the payment of this debt was raised and that my brother wanted some paper. They were both there at the time and my recollection is that brother said "I ought to have some paper protecting me against your half of this debt," and I spoke up and said "Well, the deed protects you. You have a warranty there that will protect you."

To the admission of the foregoing evidence of this witness, the defendants by their counsel, in apt time objected and the objection being overruled, the defendants then and there noted an exception.

On cross-examination the witness testified as follows:

There is a warranty in that deed by which the father warrants the title of the land to the son; I don't remember whether it is a general or special warranty; I told my brother Charlie that the warranty in the deed protected him against his father's portion of the debt.

The deed is then shown witness and he indicates the warranty and he states that the warranty is the general form of warranty and says the deed speaks for itself. Further he says: I may have been a little inadvertent in using the word controversy a little while ago, what I meant to say was that brother raised the question, I cannot say that there was a controversy. I prepared the deed and said nothing in it about who should assume the burden of that indebtedness, because I was instructed not to by my father; I don't think my brother gave me any instructions about it. When I stated that

41 I was a neutral party, I simply meant that I was a third party; the word neutral does not necessarily imply hostility, but there was to some extent a diversity of interest there between my father and brother; I have a brother Frank and a little more than a week ago probably two weeks ago, I told him I did not care to discuss the legal aspects of this case with him, because I did not think he understood it. When my father came to me in the first instance, his instructions to me were to prepare the deed.

On re-direct examination this witness testified:

Father came to me and stated that he had sold a half interest in the property down there to my brother and asked me if I would prepare the deed.

And next the plaintiff, to maintain the issues on its part joined. introduced in evidence the Deed of Trust which was given to secure the notes sued on, which is as follows:

"Charles White and Jane M. White and Charles White, Junior, and Flora White
to
Samuel R. Bond and Oliver T. Thompson, Trustees.

Deed of Trust.

This indenture, made this first day of March in the year of our Lord one thousand, eight hundred and eighty-eight between Charles White and Jane M. White, his wife, and Charles White, Junior, and Flora White, his wife, parties of the first part and Samuel R. Bond and Oliver T. Thompson, all of the city of Washington, parties of the second part:

42 Whereas, the said Charles White and Charles White, Jr. stand justly indebted unto the Connecticut General Life Insurance Company in the sum of Seven Thousand Dollars, being the deferred purchase money for the real estate herein described, for which they have executed and delivered to the said Connecticut Gen-

eral Life Insurance Company, a corporation under the laws of Connecticut, their five promissory notes bearing even date herewith, one for one thousand dollars ($1000), payable nine (9) months after date, one for one thousand Dollars ($1000) payable eighteen (18) months after date, one for One Thousand dollars ($1000) payable two (2) years after date, one for Two thousand Dollars ($2000) payable three (3) years after date and one for Two Thousand Dollars ($2000) payable four (4) years after date, all of said notes being payable to the order of the Connecticut General Life Insurance Company at the Central National Bank, with interest at the rate of six per cent. per annum, payable semi-annually.

And being desirous to secure the punctual payment of said notes when and as the same shall respectively become due and payable with all interest and cost due and accruing thereon, as well as any renewals or extensions thereof,

Now, therefore, this indenture witnesseth, that the said parties of the first part in consideration of the premises aforesaid and further for the sum of One Dollar paid to them by said parties of the second part, have granted, bargained and sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain and sell, alien, enfeoff, release and convey unto the said parties of the second part and the survivor of them, his heirs and assigns, the following described Real Estate, situate in the city of Washington, District of Columbia, to-wit:

43

"All those certain pieces or parcels of land and premises known and distinguished as and being lots numbered fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), in Square numbered five hundred and four (504), according to the recorded plat of said city, being the same Real Estate conveyed by said Connecticut General Life Insurance Company to said Charles White and Charles White, Junior, by deed of this date together with all the easements, hereditaments and appurtenances of the same belonging, or in any wise appertaining and all the estate, right, title, interest and claim whatsoever, whether at law or in equity, of the said parties of the second part, of, in, to or out of the said pieces or parcels of land and premises.

To have and to hold, the said pieces or parcels of land and premises and the appurtenances unto and to the use of the said parties of the second part and the survivor of them, his heirs and assigns.

In and upon the trusts, never-the-less hereinafter mentioned and declared, that is the trust to permit the said parties of the first part, their heirs and assigns to use and occupy the said premises and the rents, issues and profits thereof, to take, have and apply to and for their sole use and benefit, until default be made in the payment of said notes, or any of them, or any installments of interest thereon, or any proper cost charge, commission, half commission, or expenses in and about the same.

44

And upon the full payment of all of said notes and any extensions or renewals thereof and the interest thereon and all other proper cost charges, commissions, half commissions and expenses incurred by means of this trust at any time before the sale hereinafter pro-

vided for to release and reconvey the said described premises unto the said Charles White and Charles White, Junior, their heirs or assigns without cost.

And upon this further trust that upon default being made in the payment of either of said promissory notes at maturity or any installments of interest due thereon, proper cost charge, commission, half commission, interest, taxes or other proper expenses in and about the same, then and at any time thereafter the sale of said pieces or parcels of land and premises, or any portion thereof at public auction in front of said premises, after at least ten days' notice of the time, place and terms of sale by advertisement in some one or more of the newspapers, printed and published in the said city of Washington; upon such terms and conditions as the said trustees or the survivor of them may deem most advantageous to them and with power to postpone the sale from time to time in their or his discretion and to resell on default by the purchaser.

And upon this further trust upon full compliance with the terms of sale to convey the property sold in fee simple to the purchaser or purchasers thereof at his, her or their cost and expense and without any liability to see to the application of the purchase money and use of the proceeds of said sale or resale, first to pay all proper cost charges and expenses and to retain as compensation, a commission of five per cent. on the amount of said sale or sales; secondly, to apply the said purchase money to the payment of whatever may then remain unpaid of the said notes and the interest thereon to the time of said sale whether the same shall be due or not; and lastly to pay the remainder, if any, to the said Charles White and Charles White, Junior, their heirs or assigns.

And the said parties of the first part do hereby covenant with the parties of the second part, the survivor of them, his heirs and assigns, that all taxes on the said real estate shall be duly paid and that the buildings on said parcel of land shall be kept insured by the parties of the first part during the continuance of this trust in some good and responsible Fire Insurance Company or companies to the satisfaction of the parties of the second part, in the sum of Two thousand dollars ($2000), and the policy or policies of insurance be assigned to the said parties of the second part, as trustee, under these presents and for that in case the said parties of the first part, their heirs or assigns, shall fail to pay the taxes, or keep said property so insured, then the taxes may be paid and the property be insured for the amount aforesaid by the holder of said notes, or either of them, the policy to be assigned to the trustees herein and the amount of taxes and premiums paid shall be considered a part of the expenses of said debt, secured hereby and shall bear the same rate of interest as the principal debt, in default of payment of which, the parties of the second part, the survivor of them, his heirs and assigns, shall have power to sell the property hereby conveyed and shall dispose of the proceeds of sale as hereinbefore provided.

And it is further agreed that if said property shall be advertised

for sale under the provisions of this deed and not sold, then the said trustees shall be entitled to one half the commission above provided to be computed on the amount of the debt hereby secured.

In testimony whereof, the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

CHAS. WHITE. [SEAL.]
JANE M. WHITE. [SEAL.]
CHAS. WHITE, JR. [SEAL.]
FLORA WHITE. [SEAL.]

Signed, sealed and delivered in the presence of
ROBINSON WHITE.

(Liber 1303, Folio 364.)

The COURT: Have you anything else?

47 Mr. BOND: That closes the plaintiff's case, your Honor.

The Court thereupon adjourned the further hearing of this cause until Monday morning, December 14th, 1908, at 10 o'clock a. m.

DECEMBER 14TH, 1908—10 o'clock a. m.

The Court met pursuant to adjournment and the witness ROBINSON WHITE resumed the stand for further Cross-Examination and testified as follows:

I confirm my testimony on page 60 of the transcript, as follows: "I asked him the question * * * I don't know whether it was the same day; I am inclined to think it was afterwards; anyway, before I prepared the deed—I asked him what understanding he had with my brother about the indebtedness on the place; that it was usual to insert in the deed the assumption by the grantee of any indebtedness, if it was so understood. His reply was, 'You need not do that. I have that already arranged with Charlie.'"

The witness is handed a letter by defendants' counsel, and after examining it states that the letter is signed by him and addressed to Mrs. Violet Tunis, his sister, and Mr. Colbert, attorney for the defendants, thereupon read the letter referred to in evidence as follows:

48 "NOVEMBER 14, 1906.

Mrs. Violet Tunis, Elizabeth City, N. C.

DEAR VIOLET: I enclose herewith for your signature the consent of the heirs at law and next of kin to a ratification of the sale of real estate made to pay father's debts. It was agreed among everybody here that it would be best to sell first the Nineteenth Street house and second, if necessary, the Vermont Avenue house. These are the houses referred to in the consent to ratification which I send you and which you can sign and return. The situation here relative to the payment of debts was at first somewhat complicated, but is now fortunately adjusted in a manner which it seems everybody agrees

is best. Just before the real estate was sold I discovered that two additional claims had been probated against the estate; one by the Central National Bank for $1600, and interest, and one by a party who held a loan for $5500 on the foundary property now belonging to Charlie. First with reference to the foundary property. You will remember about fifteen years ago father and Charlie together bought this property and went in business as partners, each owning a half interest. Father and Charlie gave their joint note for $5500, a part of the purchase money for the property, and secured it by a deed of trust on the property. The note came due and they
49 extended it from time to time. In 1897, I think it was, Charlie purchased father's interest in the foundary, but the note was not paid, and of course to hold father or rather the estate, the holder of the note probated the whole $5500 against the estate. As between the estate and the holder of this note they could make it pay it, though we could possibly require them to first sell the real estate, though this is not certain. It would depend on what the Court might say. The estate is unquestionably liable for at least a half of this note, but I think that if we were compelled to pay it, we could require Charlie to reimburse us for our half, as he purchased the property, and it would be presumed that he assumed and agreed to pay this indebtedness. However, so far as the holder is concerned, this rule would not apply, as he could unquestionably make us pay, and require us to look to Charlie for reimbursement. That is unless we were fortunate enough to compel him to first sell the real estate and satisfy the note out of that.

"The $1600 claim is a note of which Charlie is the maker, and father was the indorser, and held by the Central National Bank. The estate is unquestionably liable to pay this note, and it is equally certain that if we did so we could compel Charlie to reimburse us. Strictly speaking, it was Charlie's duty to adjust these debts and prevent their being filed against the estate, but he claims that he was unable to do so, and could not prevent their being filed against the estate. We would unquestionably be compelled to pay this
50 note and then look to Charlie for reimbursement. Now to avoid this difficulty and some risk, after getting everybody together and talking the situation over, we decided to make Charlie this proposition: that after paying all the other debts, which amount to something over $3000, we would apply the balance of any money we might have on hand, except the money received from rents, in part payment of these two claims, provided of course, he had the claims withdrawn from probate, so that they would no longer be against the estate, and the estate would not be in any sense liable to pay them. As stated this proposition was made in writing, signed by all the rest of us, except yourself, and submitted to Charlie for his acceptance. He has expressed himself as willing to accept on these terms, and is now trying to arrange to have the holders of these notes withdraw their claim against the estate, and is sure he will succeed in doing so. Looked at in one way it seems unfair that we should be called on to pay part of debts, which strictly speaking Charlie should look after, but unless this arrangement is made we

would be compelled to sell a lot more real estate, pay his debts out of it entirely and have it out with him in the Court. No one here seems disposed to do this so we took the liberty of presenting the proposition above, which I trust you will feel was the best thing we could do, all things considered. From a thorough and accurate knowledge of the legal aspect of the case, I am personally satisfied that this was decidedly the best thing to do. You will understand that the rents received from the real estate are not to be touched, either in an adjustment with Charlie or in the payment of debts. These rents are proceeds of the real estate and must be kept intact and divided among mother and the children as provided in the will. This will be done when we get the other matter settled and out of the way.

If you agree with us that our proposition is the best thing to do, all things considered write me some thing to that effect. The girls will no doubt write to you and explain the situation from their own point of view. If you do not understand fully everything in this letter as I have explained it, let Clay read it and he will no doubt be able to do so, as he will understand just how the thing is as a matter of law. Charlie, as you know, has had very bad luck lately, and his expenses have been very heavy. He seems to be doing all he possibly can to get matters straightened up, and we are inclined to give him the opportunity of doing so. At a meeting of mother and the children here to decide what we would do, I explained the situation to them and after fully discussing the matter, each one seemed to feel that it was about the only thing we could do, and each one signed an agreement to do this. That you may have a full understanding of just what this agreement is, I send a copy to you, and if you desire, you can simply sign this and send it back. Please return the Consent to Ratification of the sale promptly, as the time is already up for the final account of the executors and we must get the thing through. Of course it would have been better could you have been here, but we did not like to send for you unless it became absolutely necessary. You were telegraphed yesterday because we were under the impression that we would not be able to come to this agreement with Charlie, but afterwards succeeded in doing so, and I therefore telegraphed you to disregard the first telegram.

Yours very truly, ROB."

(In ink:) "Love to all."

I do not say in the letter that it was Charlie's debt alone and that if the estate were compelled to pay half of it, I could make Charlie pay it back; I don't say anything of that kind in the letter. It refers more particularly to the $1600 debt of the Central National Bank, or at least that was what I intended, anyhow. I say in the letter "first, with respect to the foundry property" and "the estate is unquestionably liable for at least half of this note, but I think if we were compelled to pay it we could require Charlie to reimburse us for our half," that is if we were to pay the whole, we could make Charlie reimburse us for our half, that is clear enough.

I also state in this letter "he (referring to Charlie) has expressed himself willing to accept upon these terms, and is now trying to have the holders of these notes withdraw their claim against the estate and is sure he will succeed to do so. Looking at it one
53 way it seems unfair that we should be called upon to pay debts, which strictly speaking, Charlie should look after." It is plain as can be, Mr. Colbert. Both of these claims, one of the Central National Bank for $1600 and the other for $5500, had been filed against the estate. I have stated in that letter, and a dozen times before and since, that in my opinion my brother alone was liable to pay the Central Bank claim and a half of the other. The entire claims had been filed against the estate. That is what I meant, and it would be hard that we should be compelled to pay these things, and then turn around and have to pay Charlie, and for that reason I urged a compromise, the compromise referred to there, by which Charlie was to take whatever was left, very nearly enough to make up the half and get rid of all these claims and save all the trouble we have gotten into. There never was any question about Charlie owing half of the $5500 foundry trust and notes.

Mr. BOND: The plaintiff rests, your Honor.

Whereupon the defendants, Jane M. White and Jennie W. Fugitt, executors of Charles White, deceased, to maintain the issues on their part joined, gave in evidence the following:

The Deed of Trust for $7000 from Charles White, Jr., to Charles White, Sr., as follows:

"This Indenture,

Made this Thirtieth day of March in the year of our Lord one thousand eight hundred and ninety-three by and between Charles
54 White, Jr., and Flora White, his wife, of Washington, D. C., parties of the first part and Oliver T. Thompson and Henry F. Getz, parties of the second part.

Whereas, the said Charles White, Junior, is justly indebted unto Charles White, Senior, in the full sum of Seven Thousand Dollars ($7000) balance of the purchase money for the one undivided one-half (½) interest of the said Charles White, Senior, in and to the hereinafter described Real Estate, Land and Premises.

And whereas, the parties of the first part desire to secure the prompt payment of said debt, and the interest thereon, when and as the same shall become due and payable, together with all costs and expenses that may accrue thereon:

Now, therefore, this indenture witnesseth, That the parties of the first part, in consideration of the premises, and of one dollar lawful money to them in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the parties of the second part, their heirs and assigns, the following described land and premises, situate in the City of Washington, Dis-

trict of Columbia, and designated as Lots numbered Fourteen (14),
Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen
55 (18), in Square numbered Five Hundred and Four (504),
according to the recorded plat of said City, together with all and singular, the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in any wise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the parties of the first part, *if*, in, to or out of the said land and premises.

To have and to hold, the said land, premises and appurtenances, unto and to the only use of the parties of the second part, the survivor to them, his or their heirs and assigns.

In and upon the trusts, nevertheless, hereinafter declared; that is, in trust to permit said parties of the first part, their heirs or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof to take, have and apply to and for their sole use and benefit, until default be made in the payment of the said debt hereby secured or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission or expense in and about the same.

And upon the full payment of all of said debt and the interest thereon, and all other proper costs, charges, commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said
56 parties of the first part, their heirs and assigns, at their cost.

And upon this further trust, upon any default or failure being made in the payment of indebtedness or of any instalment of princip*le* or interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission or expense in and about the same, then and at any time thereafter, to sell the said described land and premises, at public auction, upon such terms and conditions, at such time and place, and after such previous public advertisement as the parties of the second part, their heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales; Firstly, to pay all proper costs, charges and expenses, including all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of 5 per centum on the amount of the said sale or sales; Secondly, to pay whatever may then remain unpaid of the said debt and the interest thereon, whether the same shall be due or not; and Lastly, to pay the remainder of said proceeds, if any, there be, to said Charles White, Junior, his heirs, or assigns.

And the said Charles White, Junior, does hereby agree at his own cost, during all the time wherein any part of the matter hereby
57 secured shall be unpaid or unsettled, to keep the said improvements insured against loss by fire, in the name and to the satisfaction of the parties of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby

secured, whether due or not; and also to pay all taxes and assessments, both general and special, that may become due on, or be assessed against, said land and premises during the continuance of this trust, and that upon any default or neglect to so insure, or pay taxes and assessments, any party secured hereby may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the same rate as the said indebtedness hereby secured.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

CHAS. WHITE, JR. [SEAL.]
FLORA WHITE. [SEAL.]

Signed, sealed and delivered in the presence of
ROBINSON WHITE."

"DISTRICT OF COLUMBIA, *To wit:*

I, Robinson White, a Notary Public in and for the said District of Columbia, do hereby certify that Charles White, Junior, and Flora White, his wife, who are personally well known to me as the grantors in and the persons who executed the foregoing and annexed deed bearing date on the thirtieth day of March, A. D. 1893,
58 personally appeared before me in said District and acknowledged the said deed to be their act and deed; and the said Flora White being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me acknowledged the same to be her act and deed and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal, this 30th day of March, A. D. 1893.

ROBINSON WHITE,
Notary Public, D. C."

(Endorsed on back, as follows:)
"34. Complainant's Exhibit No. 1. Deed of Trust. Charles White, Jr., *et ux.* to O. T. Thompson and Henry F. Getz. Received for record on the 30 day of March, A. D. 1893, at 12.56 o'clock p. m., and recorded in Liber No. 1779 at folio 403 *et seq.*, one of the Land records for the District of Columbia, and examined by B. K. Bruce, Recorder."

59 And next the same defendants, to maintain the issues on their part joined, introduce in evidence the petition of Jane M. White, Charles White, Jr., and Jennie W. Fugitt, filed —

Adm. Doc., No. 1327.

"*In re* Estate of CHARLES WHITE, Deceased.

Petition.

Your petitioners, Jane M. White, Charles White, Jr., and Jennie W. Fugitt petition this Honorable Court and state as follows:

First. That they are citizens of the United States, and the said Jane M. White, a resident of Prince George County, Maryland, and the said Charles White, Jr., and Jennie W. Fugitt residents of the District of Columbia and petition this Court as the executors named in the last will and testament of the said Charles White hereafter referred to.

Second. That Charles White late of Prince George County, Maryland, died at his home on the first day of November, 1905, in the said Prince George County, Maryland, leaving a widow, Jane M. White and heirs at law and next of kin, the following: Volney White, Charles White, Jr., Viola W. Tunis, Mary White, George White, Franklin White, Laura White, Robinson White, Jennie W. Fugitt, and Susie White.

Third. The decedent's last place of domicile was in Prince George County, Maryland. The estimated value of the personal
60 property is about $1562.50 and the estimated value of the real estate is about $60,000. The personal estate consists of cash in the Second National Bank $19.11, a check of Caywood & Garrett $261.39, debts due the decedent amounting to $482, household furniture at 225 6th St., N. E. worth $300, livestock, farming implements, and household furniture on the farm in Prince George County, Maryland worth $500 making a total of all personal property amounting to about $1562.50. The real estate consists of dwelling houses in Washington, D. C., and a farm in Prince George County, Maryland. The decedent left debts as follows as far as your petitioners can ascertain, funeral expenses $303, the cost of a burial lot in Rock Creek Cemetery $380, due various farm laborere in Prince George County $36, due doctors and nurse about $50, due the Second National Bank a promissory note and interest, $2010 and a debt of $4000 secured by a deed of trust on house and premises #225 6th St., N. E., Washington, D. C. making a total of unsecured debts $2779 and secured debts $4,000.

Fourth. The decedent left a widow, Jane M. White, and next *to* kin as follows: Volney White, Charles White, Jr., Viola W. Tunis, Mary White, George White, Franklin White, Laura White, Robinson White, Jennie W. Fugitt, Susie White, all children of decedent and all of whom are of full age.

Fifth. The decedent left a last will and testament herewith filed for probate and record.

61 Wherefore the petition considered, your petitioners pray as follows:

First. That the said last will and testament of the said Charles White deceased be admitted to probate and record as a will of real estate and personalty.

Second. That letters testamentary be granted to your petitioners, Jane M. White, Charles White, Jr., and Jennie W. Fugitt.

Third. And have such other and full relief as exigencies may require.

JANE M. WHITE.
CHARLES WHITE, JR.
JENNIE W. FUGITT.

ROBINSON WHITE,
S'lc't'r for P't'ners.

DISTRICT OF COLUMBIA, *ss:*

Before me a Notary Public in and for the said District personally appear, Jane M. White, Charles White Jr. and Jennie W. Fugitt and on oath state that they have heard read the foregoing petition and that all matters therein stated on personal knowledge are true as stated and that all matters therein stated on information and belief, they verily believe to be true.

JANE M. WHITE.
CHAS. WHITE, JR.
JENNIE W. FUGITT.

Subscribed and sworn to before me this 7th day of Nov. 1905.
JOHN L. FLETCHER,
Notary Public, D. C."

62 (Endorsed on back, as follows:) "13271, Docket No. 34. *In re* Estate of Charles White, Decsd. Petition for Letters Testamentary and for Probate of the Will of decedent. Charged Deposit $15 Att'y. Filed Nov. 8, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court. Robinson White, Sletr. for Ptnrs."

And next the same defendants, to maintain the issues on their part joined, introduced in evidence the petition signed by Charles White, Jr. of the executors of Charles White, deceased for the sale of the real estate for assets with which to pay debts, which petition is as follows:

63 "Adm. Doc., No. 13271.

In re Estate of CHARLES WHITE, Deceased.

Petition.

Your petitioners, Jane M. White, Charles White, Jr., and Jennie W. Fugitt, Executors of the Estate of Charles White, deceased, petition this Honorable Court and state as follows:

First. That the decedent, Charles White, by his last Will and Testament duly filed in this Court and admitted to Probate and Record, provides, among other things, that his funeral expenses and all just debts be paid; that his personal estate be used for this pur-

pose; and if the same is not sufficient to pay such debts, then that so much of his Real Estate as may be necessary be sold to pay and satisfy same.

Second. That the total personal assets of the decedent so far collected are insufficient to pay the debts of the decedent. That all of the decedent's personal property has been sold, and there has been realized therefrom the sum of Nine Hundred and Seventy-three ($973) Dollars and Twenty-five (25) cents, which added to the amount of money left by the decedent as set forth in the original petition, makes a total of money on hand available for the payment of debts One Thousand Two Hundred and Fifty-three ($1253) Dollars and Seventy-five (75) Cents. That the total amount of the indebtedness due by the decedent so far as shown by the
64 original petition, and as far as since ascertained, amounts to over Three Thousand ($3000) Dollars.

Third. That it is therefore necessary in compliance with the provisions of the Will to sell certain of the decedent's Real Estate with which to discharge his debts, obligations and cost of this administration.

Fourth. That as shown in the original petition filed in this cause, the decedent left, among other pieces of Real Estate in the District of Columbia, Sub-Lot numbered Forty-six (46) in Square numbered One Hundred and Seventeen (117), improved by a dwelling house, as also Sub-Lot numbered Seventeen (17) in Square numbered Three Hundred and Seven (307), also improved by a small dwelling house. That your petitioners have consulted the heirs and next of kin of the decedent, and they unanimously agree that it would be desirable to sell for the purpose of paying said debts, first Sub-Lot numbered forty-six (46) in Square numbered One Hundred and Seventeen (117), and if sufficient is not realized from the sale of the said property, then to sell Sub-Lot numbered Seventeen (17) in Square numbered Three Hundred and Seven (307) for this purpose.

Wherefore your petitioners pray as follows:

First. That the Court will pass its order in this cause, authorizing and directing them to sell at Public Auction after ten days' advertising in the —— Newspaper, Published in the city of Washington, District of Columbia, Sub-Lot numbered Forty-six (46) in Square
65 numbered One Hundred and Seventeen (117), fronting Sixteen and Nine-Tenths (16.9) feet on Nineteenth Street, Northwest, by a depth of One Hundred and Forty and Ten One-Hundredths (140.10) feet; and if the said lot does not sell for sufficient to pay the balance of the indebtedness of decedent, then to sell at Public Auction after a similar advertisement for ten days, Sub-Lot numbered Seventeen (17) in Square numbered Three Hundred and Seventeen (317) in said City of Washington, District of Columbia; said lot fronting Sixteen and Fifty-One-Hundredths (16.50) feet on Vermont Avenue, by a depth of Seventy-six and Four Tenths (76.4) feet.

Second. For such other and further relief as the exigencies of the case may require.

DISTRICT OF COLUMBIA, *ss:*

Before me, James F. Neale, a Notary Public, in and for the said District of Columbia, personally appeared Charles White, Jr., and being first duly sworn, states that he is one of the petitioners in said petition named, and that all matters therein stated on personal knowledge are true, and all matters therein stated on information and belief, he verily believes to be true.

CHARLES WHITE, JR.

Subscribed and sworn to before me this 9th day of October, 1906.

JAMES F. NEALE,
Notary Public."

66 (Endorsed on back:) "Adm. Docket, No. 13271, Docket No. 34. *In re* estate of Charles White, dcsd. Petition of Executor to sell real estate. Filed October 11, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court."

And next the same defendants, to maintain the issues on their part joined, introduce in evidence the articles of agreement of the dissolution of the firm of Charles White & Company, which is as follows:

"To all whom it may concern:

Be it known that the copartnership heretofore existing between Charles White, Sr., and Charles White, Jr., doing business as Iron Founders and Machinists, under the style and title of Charles White and Company, was dissolved by mutual consent on the 30th day of March, A. D. 1893, the said Charles White, Sr., retiring from the business, and the said Charles White, Jr., succeeding to the entire interest in the same.

CHAS. WHITE, SR.
CHAS. WHITE, JR."

67 And the same defendants, to maintain the issues on their part joined offer in evidence the summons and the entire record in this cause for the purpose of showing that process was served on Charles White, Jr., individually, on November 21st, 1907, and that he has entered no appearance and has filed no plea in this cause.

And next, the same defendants, in order to maintain the issues on their part joined, gave in evidence the testimony of FRANKLIN WHITE, who testified as follows:

I am a son of the late Charles White and a brother of Charles White, one of the parties to this suit; I had a conversation with Charles White about the month of November, 1906, near the corner of 6th and Massachusetts Avenue, Northeast; the subject of the conversation was various things.

This witness is withdrawn and CHARLES WHITE, JR., resumes the stand for further cross examination.

I remember having a conversation with Franklin White on the street corner of 6th and Mass. Ave., Northeast in this city, but I think it was a little later than November, 1906. I have no recollection of making to Franklin White the remark 'You think how it is strange or how I can explain why I have kept up the interest on those notes," or words to that effect. Franklin White never said to me "Why didn't you have these things settled up before pap (meaning your father) died," or that I replied "You know pap was a very strange man and I was afraid he would cut me off;" I might have told him that I didn't know that claim was going to be filed.

68 I didn't know that claim was going to be filed until after it was filed. I did not in fact know it. The first intimation I had that that claim was filed was a letter from Mr. Bond notifying me he had filed a claim against the estate for $5500, and for me to notify my co-executors; he wrote me a letter to that effect, and I did notify my co-executors of that letter. I took that letter home and read it to them and left that letter there.

The foregoing testimony of this witness is by the Court excluded and the defendants note an exception.

On behalf of the defendants FRANKLIN WHITE resumes the stand and testified as follows:

The relations between Charles White, Jr., and Charles White, Sr., for at least five years previous to the death of Charles White, Sr., I would consider very bad, I am speaking of the business relations between the two.

"Whereupon, the evidence being all in and both sides having rested their cases, plaintiffs' counsel moved the Court to direct the jury to render a verdict in favor of the plaintiff against the defendants Jane M. White, Charles White, Junior, and Jennie W. Fugitt, Executors of Charles White, deceased, for the sum of $5,500, with interest from September 1, 1908, and defendants' counsel moved the Court to direct the jury to render a verdict in favor of the defendants.

The Court overruled the motion of defendants' counsel and granted that of plaintiff's counsel, to which action of the Court defendants' counsel objected, but the objection was overruled and defendants' counsel then and there noted an exception, which

69 the presiding Justice entered upon his minutes.

The jury then rendered a verdict according to said direction of the Court."

Whereupon, to-wit, on the 16th day of December, 1908, in apt time, counsel for the defendants filed motions as follows:

(1) Motion for New Trial; (2) Motion for judgment *non obstante veridicto;* (3) Motion for arrest of judgment; which said motions at the hearing thereof, to-wit on the 29th day of January, 1909, were each and all overruled, to which action of the court, the defendants then and there noted an exception.

The foregoing exceptions were duly taken by the defendants at

the time of the rulings excepted to and at the time the jury were instructed upon the whole evidence to render their verdict for the plaintiff, and were duly noted by the Court on its minutes at the times the same were taken.

This bill of exceptions contains the substance of all the evidence in the case.

To the end that justice may be done in said cause, and that the questions raised by the foregoing exceptions may be reviewed on appeal, the defendants pray the court to sign this their bill of exceptions, as and for the time the same were noted, which is accordingly done, now for then, this 10th day of April, 1909.

WENDELL P. STAFFORD, *Justice.*
McNEILL & McNEILL AND
M. N. COLBERT,
Attorneys for Defendants Jane M. White and Jennie W. Fugitt, Two of the Executors of Charles White, Deceased.

70 *Directions to Clerk for Preparation of Transcript of Record.*

Filed April 13, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 49957.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY, Plaintiff,
vs.
JANE M. WHITE, CHARLES WHITE, JR., and JENNIE W. FUGITT, Executors of Charles White, Deceased, and CHARLES WHITE, JR., Individually, Defendants.

Hon. J. R. Young, Clerk D. C. Supreme Court:

Please include the following for transcript of record to the Court of Appeals:

1. Declaration. Filed November 18th, 1907.
2. Plea of Jennie W. Fugitt, Executrix. Filed December 9th, 1907.
3. Plea of Jane M. White, Executrix. Filed January 4th, 1908.
4. Plea of Charles White, Jr., Executor. Filed January 14th, 1908.
5. Joinder of Issue. As to Jennie W. Fugitt, Executrix, Filed Dec. 18, 1907. As to Jane M. White, Executrix, Filed Janu-
71 ary 5th, 1908. As to Charles White, Jr., Executor, Filed January 24th, 1908.
6. Memorandum of Verdict.
7. Judgment for Defendants. Filed December 16th, 1908.
8. Memorandum of filing Appeal Bond.
9. Order, making Bill of Exceptions of record.

10. Bill of Exceptions.
11. This paper. Filed April 14th, 1909.

McNEILL & McNEILL,
Attorneys for Defendants Jennie W. Fugitt and Jane M. White, Two of the Executrices of Charles White, Deceased.

72 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 71 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49957 at Law, wherein The Connecticut General Life Insurance Company is Plaintiff and James M. White, *et als.* are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of May A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2024. Jane M. White *et al.*, appellants, *vs.* The Connecticut General Life Insurance Company. Court of Appeals, District of Columbia. Filed May 14, 1909. Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia.

APRIL TERM, 1909.

No. 2024.

JANE M. WHITE, CHARLES WHITE, JR., AND JENNIE W. FUGITT, EXECUTORS OF CHARLES WHITE, deceased,

Appellants,

v.

THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY.

Now comes the Connecticut General Life Insurance Company, appellee, by S. R. Bond, its attorney, and moves the Court to dismiss the appeal in this cause; and for grounds of this motion says that the sole appellant is Jennie W. Fugitt, executor; that she was a party defendant in the cause jointly with her co-executors, Jane M. White and Charles White, Jr., who had, and have beneficial and substantial interests therein, and that the judgment appealed from was entered against them jointly with said Jennie W. Fugitt, but that they have not become parties to the appeal, or joined in perfecting the same, nor has there been any summons and severance, or any other equivalent proceeding as to them.

S. R. BOND,
Attorney for Appellee.

BRIEF OF APPELLEE IN SUPPORT OF MOTION TO DISMISS THE APPEAL.

Statement of the Case.

This suit was brought by the present appellee against Jane M. White, Jennie W. Fugitt, and Chares White, Jr., as executors of Charles White, deceased, and Charles White, Jr., in his own right, to recover the sum of $5,500, and interest, upon certain promissory notes made by Charles White, since deceased, and Charles White, Jr., payable to the order of this appellee.

Upon the trial of the cause the jury returned a verdict in favor of the plaintiff against Jane M. White, Jennie W. Fugitt and Charles White, Jr., as executors as aforesaid, for $5,500, with interest from September 1, 1908, and judgment was entered accordingly (Record, p. 9). From that judgment this appeal has been prosecuted by Jennie W. Fugitt, executor, alone, without any summons and severance, or any equivalent proceeding, as to the other defendants against whom the judgment was entered, or either of them.

This is shown by the appeal bond which is expressly by Jennie W. Fugitt and for her benefit alone (Rec., p. 10).

This case is misentitled upon the docket of this Court in that the other executors are therein named as appellants, to which the attorney for the appellee called the clerk's attention before entering his appearance.

In support of this motion it is deemed unnecessary to cite other authorities than the decisions of the U. S. Supreme Court, and of this Court.

In Owings *et al. v.* Kincannon, 7 Pet. 399, the appeal was dismissed in accordance with the principle there laid down that "all the parties who are united in interest

ought to unite in the appeal," and the appeal bond was there referred to as fixing the status of the appeal.

This principle has been followed in Masterson *v.* Howard, 77 U. S. (10 Wall.) 416, where Miller J., delivering the opinion, says: "It is the established doctrine of this Court that in cases at law, where the judgment is joint, all the parties against whom it is rendered must join in the writ of error," unless there has been summons and severance, or its equivalent; and the appeal was dismissed.

To the same effect are:

Hampton *v.* Rouse, 80 U. S. (13 Wall.) 187.
Simpson *v.* Greeley, 87 U. S. (20 Wall.) 152.
Feibleman *v.* Packard, 108 U. S. 14.
Harden *v.* Wilson, 146 U. S. 179.
Estis *v.* Trabue, 128 U. S. 225.
Inglehart *v.* Stansbury, 151 U. S. 68.
~~Peter *v.* Kiesel, 146 U. S. 423.~~

In the latest utterance of that Court on this point, in Winters *v.* U. S., 207 U. S. 564, on page 574 it is declared that the rule that the parties to a joint judgment, or decree, must "join in an appeal or writ of error, or be detached from the right by some proper proceeding, or by their renunciation, is firmly established."

This Court has had occasion to consider and apply this rule in

Godfrey *v.* Rossle, 5 App. 299,
Slater *v.* Hamacher, 15 *Id.* 294,
Cruit *v.* Owens, 21 *Id.* 378 (391),
Taylor *v.* Leesnitzer, 31 App. 92,

where the motion to dismiss the appeal was sustained on the ground, as stated in the opinion delivered by Mr. Justice Robb, that "Mrs. Padgett and her sister

have a joint interest in the subject-matter appealed from, but Mrs. Padgett was not made a party to the appeal."

A motion was made to vacate, or modify, the decree of dismissal, but was denied, the Chief Justice delivering the opinion (same report, p. 94). The appeal bond not being in the record, recourse was had to its inspection in the Court below by which it was shown to be conditioned solely for the benefit of Leesnitzer, which was held to determine the question.

Upon reason and authority it is contended that in the case at bar the appeal must be dismissed.

S. R. BOND,
Attorney for Appellee.

IN THE

Supreme Court of the District of Columbia.

JANE M. WHITE, CHARLES WHITE, JR., AND JENNIE W. FUGITT, EXECUTORS OF CHARLES WHITE, DECEASED,
Appellants,
vs.
THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY.
} No. 2024.

BRIEF IN ANSWER TO BRIEF OF APPELLEE IN SUPPORT OF ITS MOTION TO DISMISS APPEAL.

The grounds of appellee's motion for dismissing the appeal are stated to be the following: "That the sole appellant is Jennie W. Fugitt, executor; that she was a party defendant in the cause jointly with her co-executors, Jane M. White and Charles White, Jr., who had, and have, beneficial and substantial interests therein, and that the judgment appealed from was entered against them jointly with said Jennie W. Fugitt, but that they have not become parties to the appeal, or joined in perfecting the same, nor has there been any summons and severance, or any other equivalent proceeding as to them."

The record does not agree with the statement of coun-

sel for the appellee, "That the sole appellant is Jennie W. Fugitt, executor." The record of the case discloses that each of the three executors of Charles White, deceased, to wit: Jane M. White, Charles White, Jr., and Jennie W. Fugitt, appealed from the judgment of the court in the case.

The judgment of the court is found on pages 9 and 10 of the record, and immediately following this judgment, on page 10 of the record, is the following record statement: "The said defendants note an appeal to the Court of Appeals of the District of Columbia, and the penalty of the bond for costs on said appeal is hereby fixed in the sum of One Hundred Dollars ($100)." This record correctly states the facts with respect to the appeal by each of the record appellants, and this court will only consider the record, as it is presented. Note also the following statement of case on appeal from the Clerk's Transcript of Record: "JANE M. WHITE, CHARLES WHITE, Junior and JENNIE W. FUGITT, Executors of Charles White, deceased, Appellants, vs. THE CONNECTICUT GENERAL LIFE INSURANCE COMPANY."

The record (p. 10) shows that the appeal bond was signed by Jennie W. Fugitt, one of the executors of Charles White, deceased, and by a surety company, as surety. This does not, in any manner, refute the record that all of the record parties appellant duly appealed from the judgment of the Supreme Court of the District of Columbia. One executor may provide bond on appeal, when bond is required, for the benefit of all co-executors, but it is respectfully submitted that the filing of cost bond on appeal by either of the executors is unnecessary. Note the following: "In most jurisdictions an appeal bond need not be given by personal representative, unless the appeal is from a judgment affecting him personally." See Vol. 18, Cyc., 1082.

"As a general rule, a bond need not be given by an executor or administrator perfecting an appeal or writ of error

in the interest of the estate." 2 Cyc., 823, and cases cited from reports of Arkansas, California, Georgia, Indiana, Michigan, Mississippi, Missouri, New Hampshire, Ohio, Pennsylvania, Texas, Utah, Virginia, Wisconsin and United States, Deneal vs. Young, 2nd Cranch, cc., 200.

In Emerich vs. Armstrong, 1st Ohio, 513, it was decided that an Executor or Administrator could perfect an appeal, not only for himself, but for his co-executors in all cases where the interest was joint, without giving a bond.

We respectfully submit that all the record appellants having duly appealed from the judgment of the Supreme Court of the District of Columbia, the appeal stands without impeachment before this court, unless authorities can be cited to show that a bond for costs must be filed in all cases by executors; that separate bonds must be required by each appellant, or that each appellant shall sign a joint bond. No such authorities have been or can be cited.

The principle seems well settled that the act of one executor, in complying with the details of a rule of court as to a bond—granting such rule exists as against a personal representative of a decedent—is the act of all, since all represent the estate of the decedent.

In Section 400, p. 479, Schouler on Executors and Administrators, it is held that one executor has the same power as all in the performance of the duties of executor. In Section 40, p. 51, the same author says, "where several executors are named or designated, all may qualify as co-executors, though all are thus legally regarded as an individual, in place of a sole executor." This is the settled law on the subject.

Counsel for the appellants does not see, in view of the above discussion and authorities, that the citations of counsel for appellee are apropos. The different authorities cited by appellee are to the effect that where a judgment is joint, all the parties against whom it is rendered must join

in the writ of error, unless there has been summons in severance, or its equivalent. Assuming that this is the correct statement of the law, it cannot be seen how that principle affects the pending cause, because in the pending cause all the appellants have been duly appealed, according to the record, and none of the cases cited by counsel set forth the principle that the formality of the execution of a bond constitutes the appeal.

The bond in this case is a bond for cost only and one executor had the undoubted right to execute such bond—if it is held that a bond was required at all—and thereby to bind the estate to the payment of the costs of the appeal. All the parties appellant have been made parties to the appeal.

The bond filed in this case was not a supersedeas bond, as in the case of Taylor vs. Leesnitzer (31 App., 92). This case, cited by counsel for the appellee, sustains absolutely the foregoing contention by an approved citation of Scruggs vs. Memphis & C. P. Co., 131 U. S., CCIV, Appx., and 26 Law Edition, 741. In this case the Supreme Court of the United States decided as follows: "The bond for appeal is sufficient; the appeal does not operate as a supersedeas; the security is for cost only; the bond need not be signed by all the appellants—Brocket vs. Brocket, 2nd Hurst, 240—having been approved by the Judge, it stands as security for all the appellants." The above opinion is by Chief Justice Waite, and was approved by the full bench, and no contrary principle has ever been enunciated.

In view of the authorities cited and the principle involved, the motion of appellee should be overruled.

Respectfully submitted,

McNEILL & McNEILL,
M. J. COLBERT,
Attorneys for Appellants.